Congress - panel session

Regulating for Real People: Understanding Consumer Behaviour to Drive Effective Markets

Thank you for the introduction.

Regulating for real people. I think this topic has a very funny title.

It reminds me of a joke from the comedian Jimeoin when he talked about his mother who, like my mother, regularly tells him to take care when using the 'good room' in the front of the house. It made him wonder, if there is a good room, is there an evil room?

So, surely it follows, if we're going to start regulating for real people - who have we been regulating for before? Imaginary people?

Unfortunately, I think there is some truth to this joke - and that too often we continue to regulate for imaginary people, particularly when it comes to consumer empowerment and regulating in a way that prompts consumers to make 'so called' good or better decisions.

Before I get in to that, I do want to begin with the proposition that consumer policy and effective competition are two sides of the same coin. I think this has been recognised for many years.

In fact, in preparing my remarks today, I went back through some previous speeches to this congress. In 2007, eighteen years ago, then Secretary of the Treasury Ken Henry gave a speech where he said "competitive markets drive consumer welfare, and consumers drive competitive markets".

Just two years after that, in 2009, Dr Stephen Kennedy who is now the Secretary of the Treasury but at that stage was a general manager in Treasury, gave a very interesting speech building upon this theme. He talked about how government policy, consumer policy, has an important role to play in preserving competition and empowering consumers as much as possible.

Dr Kennedy talked about the lessons from psychology and behavioural economics, that we're all familiar with - including that consumer choice can be overwhelming, and the choice overload can lead to poor market outcomes. He talked about the role of empowerment and helping people make choices that are in their own best interests.

He also talked about the lessons from 'nudge', made famous by Cass Sunstein and Richard Thaler in their book. They promote the role of 'choice architecture', framing the way that information is provided and to help people make more optimal choices while not restraining or restricting them.

This all came back to my mind following the Treasurer's announcement a few weekends ago where he revealed new banking reforms to help us get a good deal. Some of these reforms follow reports undertaken by the ACCC on home loans and retail deposit accounts.

I won't go through all the reforms - but they include requiring banks to tell customers when their interest rate changes on their transaction or savings account and also asking Treasury to investigate how behavioural economics and prompts could be used in the banking sector to encourage consumers to switch to cheaper home loans and retail banking products.

Now these reforms sound great - who doesn't want a better deal?!

However, I don't think these sort of reforms are regulating for real people, and may in fact they may exacerbate inequities. Let me tell you why.

First, unfortunately there appears to be little evidence from other markets that prompts are the most effective intervention.

To take one example, in Victoria since 2019, there has been a requirement on energy retailers to tell customers whether they are on the best offer possible. This requirement is through information on bills, at least once every four months. Around this time this was introduced, the Victorian Government even paid people a $250 power saving bonus if they went to the state government energy comparison website.

Despite these policies, the regulator recently reported that Victorians are paying more than $270m more than they would be if everyone was on the best offer. Let that sink in, Victorians are paying $270m each year more because they are on a poor deal, at the same time the Government was paying everyone $250 to switch to a better offer.

No doubt some businesses intentionally make nudge messages less effective. ASIC's 2019 report on why disclosure should not be the default explains that firms can undermine disclosure requirements by carefully timing when they provide the information and making small design changes. These tactics significantly impact how we access, understand, and use the information.

Second, these sort of nudges risk exacerbating inequity. This is because they may work for those already advantaged, those that have the educational levels and digital capability which enables them to take action based on the information. To put it blunt the white, ably bodied, middle classes. Unfortunately, research has shown that individuals with fewer cognitive resources or who have less experience in navigating complex systems are far less likely to take action.

So I ask: Which group are the real people?

This is not to say that behavioural nudges never work. In fact, defaults are far more likely to be effective than nudges that just give us more information. We might come back to the difference between structural or default nudges, and nudges that seek to simplify or highlight information in the panel session.

But if we're to talk of regulating for real people - I think we should be asking ourselves: what to real people expect from businesses and the market?

I think real people expect competitive deals and pricing, quality services that meet their needs, and fair treatment throughout. They want businesses to act in a way that maintains their trust and confidence.

If a business tells you that you've been on a bad deal for a long time - do you think that enhances trust or makes people more distrustful? Would a real person ask why they haven't just put me on the better deal before now?

Most here would be aware that I'm a big fan of the proposal to enact an unfair trading prohibition into Australia's consumer law. This, in my view, would enhance effective competition and be a good example of regulating for real people.

Rather than having to 'empower' consumers, this reform would help create a business norm that requires firms to meet their customer expectations - to not do so, to distort customer choice or not meet customer needs, would be unfair. To place barriers in front of consumers getting on good deals would be unlawful.

And norms around fairness and quality, in turn, would enhance competition and market effectiveness.

After all, if businesses are not incentivised to provide superior customer care and quality service, or if the market forgets about the needs of the most vulnerable, consumers are far less likely to play their part in ‘activating’ competition. They'll give up, they'll disengage - and the market won't be able to play its role in spurring innovation, efficiency and good community outcomes.

There are some regulatory standards that lean this way already. In financial services, for example, firms must provide services efficiently, honestly and fairly.

I ask - is it efficient, honest, and fair to leave your customer on a paltry 0.01 % savings rate, when you have other accounts offering 5% or more?

So, in summary, we have some questions before us. Will real people react to nudges and prompts in the way we expect? Or do real people simply expect fair pricing, quality services, and trustworthiness from businesses.

Let's delve deeper into these issues with our panel of experts, please welcome:

- Gina Cass-Gotlieb, Chair, ACCC
- Katharine Kemp, Associate Professor of Law, UNSW
- Jon Duffy, Chief Executive, at Consumer NZ
- Susan Calvert, Managing Director, Behavioural Economics Team at PM&C

Questions

- Gina: How do you think consumer policy and effective competition are interlinked, and what are some practical ways to ensure that they complement each other in today's market and the work of the ACCC?

- Susan: In my remarks, I suggested that nudges and disclosure requirements often fall short. Can you share examples where these approaches have been successful or unsuccessful in your experience?

- Katharine: In your view, if nudges result in some people, let's say the more advantaged, taking action; can that help the market generally? I'm thinking about the role of data and personalisation in today's economic transactions? [e.g. motor vehicle data and privacy]

- Jon: I understand that Consumer NZ has run an energy switching service. Can you tell us about your service, and experience in helping people switch? What have been the successes and barriers?

- Earlier I suggested that businesses should be required to automatically offer better deals to consumers. What are your thoughts on this, and how can it be practically implemented?

- Gina: We've talked a bit about an unfair trading prohibition. Where is this up to, and do you think this can make a difference in meeting "real people's" regulatory expectations? In what sorts of matters would this law make a difference to the ACCC?

- Katharine: There is a similar proposal in privacy law reform, around a duty to use data fairly and reasonably. Can you tell us where this is up to, and what difference it might make?

- Susan: What role should government and policymakers play in regulating for real people, and how can they ensure that regulations keep pace with the evolving market dynamics?

- Jon: There has been some concern that more direct regulatory approaches that drive quality or fairness or sustainability can cost more. I think this debate has played out in relation to a 'right to repair' in NZ - can you tell us about that?